THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7374 OF 2006

Dated:9th NOVEMBER, 2006.

Between :

1. Mutha Navin Krishna and 55 others. … Petitioners

And

1. The General Manager, South Central Railway, Secunderabad and 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7374 OF 2006

ORDER :

The petitioners, 56 in number, filed this writ petition seeking a Mandamus declaring the action initiated by the respondents to evict the petitioners from the lands in occupation of the petitioners situated in T.S.No.1961/1, Ward No.2, Block No.2 of Kakinada Town and Mandal, East Godavari District as arbitrary, illegal and without jurisdiction.

The facts, in brief, are as under :

The petitioners claim to be owners and possessors of different extents of land situated in T.S.No.1961/1 of Kakinada town having purchased the same from the pattadars for a valid consideration. While so, South Central Railway (SCR), Vijayawada – respondents herein – entertained a doubt about the extent and the boundaries of the land belonged and owned by them in T.S.No.1961/2 and the matter was referred to the Mandal Revenue Officer (Urban), Kakinada. At the instance of the respondents, the Mandal Revenue Officer, Kakinada conduced a joint survey and the said Joint Survey Report dated 31-12-2005 shows that the land in T.S.No.1961 was divided into 1961/1 and 1961/2. It was stated that the land in T.S.No.1961/1 was owned by one Suryayanrayana and others, whereas the land in T.S.No.1961/2 belongs to M.S.M. Railway Company. It is relevant to note that the Senior Section Engineer, SCR was also a signatory to the said Joint Survey Report, dated 31-12-2005.

However, the 3rd respondent appears to have addressed a letter

dated 11-1-2006 to the Town Planning Officer, Municipal Corporation, Kakinada claiming that the Joint Survey Report is not acceptable to them. In response, the Town Planning Officer, Kakinada Municipal Corporation called upon the 3rd respondent to send the records through the competent official for necessary scrutiny with the revenue records.

No such action was taken by the respondents, but, on the other hand, the respondents attempted to construct a compound wall demarcating the property claimed by them. Since the said wall would pass through the lands belonging to the petitioner in T.S.No.1961/1, they filed W.P.No.1309 of 2006. The said writ petition was disposed of by this Court by order dated 27-1-2006 directing the respondents not to interfere or dispossess the petitioners in respect of the plots in T.S.No.1961/1 without following due process of law.

Subsequently, notices were issued in Form-A under sub-section (1) of Section 4 of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'the Act'). The said notices were issued by the Additional Divisional Railway Manager, SCR, Vijayawada who was designated as Estate Officer under the Act alleging that the petitioners are in unauthorised occupation of the public premises and calling upon them to show-cause as to why an order of eviction should not be made. It was alleged in the said notice that the petitioners had encroached into the Railway land at Km 14/2 to 14/11-12 between Kakinada town and Kakinada Port Railway Stations and erected RCC brick walled houses with A.C. sheet roof. The petitioners gave a reply dated 20-2-2006 stating that as per the Joint Survey Report the respondents cannot claim any right in respect of the land in question situated in T.S.No.1961/1. Having received the said reply, the 2nd respondent issued notice in Form-B, dated 31-3-2006 under Section 5 (2) of the Act thereby ordering eviction of all the persons in occupation of the land in question and calling upon

them to vacate within 15 days failing which they would be evicted by use of force. In the schedule to the said notice, the land in question was described as Railway land in T.S.No.1961/2. Aggrieved by the same, this writ petition is filed seeking a declaration that the lands in T.S.No.1961/1 did not constitute a ***public premises*** under the provisions of the Act and as such the eviction proceedings initiated by the 2nd respondent are arbitrary, illegal and without jurisdiction.

In the counter-affidavit filed on behalf of the respondents, it is stated that as per the original land plan available with the Railways the entire land of 33 acres + 23,552 sq.ft. in T.S.No.1961/2 belongs to Railways only. Even in the Joint Survey Report got prepared in the year 1988 by the Revenue Authorities some encroachments were shown. On 28-7-1994 joint survey of the land in T.S.No.1961/2 was conducted and the report shows that the boundaries of T.S.No.1961/2 are exactly tallying with that of the town plan/records. As per the said joint inspection, the title and possession of the Railways in T.S.No.1961/2 are confirmed and the Railways have been in physical possession and enjoyment of 33 acres + 23,552 sq.ft of land. Though the rights of the Railways were confirmed, as a matter of procedure a further joint survey was conducted on 31-12-2005. However, in the said survey, the original records were not verified and even the Senior Section Engineer/Works/SCR who was a signatory to the said survey report was not competent to represent the Railways. The said Joint Survey Report dated 31-12-2005 has not been accepted by the Railways and accordingly a letter was written on 11-1-2006 to the Town Planning Officer, Municipal Corporation. Since the said Joint Survey Report was contra to the plan prepared by the Revenue authorities during the year 1988 as well as the Joint Survey Report conducted in the year 1994, the petitioners claim basing on the report dated 31-12-2005 is untenable.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioners contended that T.S.No.1961/1 to which the petitioners are claiming title and possession does not fall within the definition of ***Public Premises*** and therefore the proceedings initiated under the said Act are without jurisdiction and liable to be set aside on that ground alone.

On the other hand, the learned Counsel appearing for the respondents while reiterating the stand taken in the counter-affidavit that the Joint Survey Report dated 31-12-2005 was incorrect and un-acceptable, contended that against the order of eviction passed under Section 5 of the Act an alternative remedy of appeal is available under Section 9 of the Act and without exhausting the said remedy the petitioners cannot maintain this writ petition. In support of his submission, the learned Counsel relied upon a decision in CENTRAL COALFIELDS LTD. v. STATE OF JHARKHAND[1].

The learned Counsel while relying upon the decision in SANJAY SITARAM KHEMKA v. STATE OF MAHARASHTRA & ORS.[2] further contended that since the matter involves several disputed questions of fact, the same cannot be entertained and decided by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

Admittedly, the impugned eviction proceedings are initiated under the provisions of the The Public Premises (Eviction of Unauthorised Occupants) Act, 1971. The Preamble itself shows that the said Act was enacted to provide for eviction of unauthorised occupants from the public premises and for certain incidental matters. Section 3 of the Act provides for appointment of Estate Officers by the Central Government by Notification in the Official Gazette. Under Section 4 if the Estate Officer is of the opinion that any person is in unauthorised occupation of any ***public premises*** and that they should be evicted, a notice shall be issued in writing calling upon such person to show-cause as to why order of eviction should not be made. After considering the explanation, if any, in response to the notice under

Section 4 of the Act and after personal hearing, the Estate Officer if satisfied that the public premises is in unauthorised occupation may make an order of eviction for reasons to be recorded.

At the outset, it is to be noted that the word "***Public Premises***" has been defined under Section 2 (e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, as under :

> *"**(e) public premises means –***
> *(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980, under the control of the Secretariat of either Houses of Parliament for providing residential accommodation to any member of the staff of that Secretariat;*
> *(2) … … … … … ……"*

A bare perusal of the said definition shows that only such premises which belongs to the Central Government or which is taken by it on lease or on a requisition would be treated as a ***public premises***. Section 4 read with Section 2 (e) of the Act makes it clear that before taking any action against any person allegedly in unauthorised occupation of a public premises, it is incumbent upon the Estate Officer to satisfy himself, at the first instance that the said premises is a public premises.

In the instant case, even according to the respondents, they are claiming title only in respect of T.S.No.1961/2. The writ petitioners never made any claim in respect of T.S.No.1961/2, but their specific case is that they are in possession of different extents of land situated in T.S.No.1961/1 having purchased the same for valid consideration. They relied upon the Joint Survey Report dated 31-12-2005 which was signed by the Town Surveyor, Municipal Corporation, Kakinada; Town Planning Officer, Municipal Corporation, Kakinada Urban; Mandal

Revenue Officer, Kakinada Urban; Mandal Surveyor, Kakinada Urban apart from the Senior Section Engineer of South Central Railway. On the basis of the endorsement dated 7-7-1941 made in TSFR by Taluk Register, it was recorded in the said report dated 31-12-2005 that T.S.No.1961/1 admeasuring 22 acres + 6907 sq.ft is owned by one Mandala Suryanarayana, whereas T.S.No.1961/2 admeasuring 13 acres + 23522 sq.ft owned by MSM Railway Company. May be that, the respondents subsequently contended that the said report was not based on the original records and even the officer who was a signatory to that report was not competent to represent the Railways. However, the said dispute has not yet been resolved and the fact remains that as on today the Joint Survey Report dated 31-12-2005 stands good and binding between the parties. Though the 2nd respondent addressed a letter to the Town Planning Officer, Municipal Corporation raising certain objections, no further steps have been taken thereafter by the respondents by producing the records, as called upon by the Town Planning Officer, Kakinada Municipal Corporation. As a matter of fact, the entire controversy appears to be with regard to the demarcation of T.S.No.1961/2. Admittedly, the respondents are not making any claim in respect of T.S.No.1961/1. Though in this writ petition, the respondents claimed that T.S.No.1961/2 comprises of 33 acres + 23552 sq. ft., no material has been placed before this Court to substantiate the said plea. In case the respondents raise any dispute as to the demarcation/identity of T.S.No.1961/2, it is for them to establish their case by working out the appropriate remedy available under law. In the absence of such determination with regard to the extent as well as the demarcation of T.S.No.1961/2, the respondents cannot claim any title in respect of T.S.No.1961/1 which is in possession of the petitioners. As a matter of fact, in Form-A notice issued under Section 4 (1) of the Act, the land in occupation of the petitioners was described as the land at KM 14/0 to 14/11-12 between Kakinada Town and Kakinada Port Railway Stations without reference

to T.S.No.1961/2. Even in the impugned eviction notice dated 31-3-2006 issued in Form-B the land was described as T.S.No.1961/2 alleging that the same has been in occupation of the petitioners. Since the demarcation/identity of the said land is seriously in dispute, unless the dispute is resolved by the competent authority and the claim of the respondents that the land in occupation of the petitioners forms part of T.S.No.1961/2 is established, I am of the opinion that the definition of ***public premises*** under Section 2 (e) of the Act is not attracted. As rightly contended by the learned Counsel for the petitioner, in the facts and circumstances of the case, the respondents are not entitled to invoke the provisions of the Act.

In the light of the above finding that the impugned proceedings are without jurisdiction, the existence of alternative remedy of appeal under Section 9 of the Act is not a bar to grant the relief under Article 226 of the Constitution of India. Accordingly, the Writ Petition is allowed and the impugned notice dated 31-3-2006 is hereby set aside. However, this shall not preclude the respondents to work out the appropriate remedy as available under law for declaration of their title in accordance with law and to take appropriate proceedings for recovery of the possession of the land in question, if necessary. No costs.

G. ROHINI, J.

Dt. 09–11-2006
Gbs

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[1] (2005) 7 Supreme Court Cases 492

[2] 2006 (4) Supreme 347